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IN THE

Supreme Court of the United States

October Term, 1956

No. 442

TWENTIETH CENTURY-FOX FILM CORPORATION, a Corporation,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

JOSEPH P. LOEB,
523 West Sixth Street,
Los Angeles 14, California,
Attorney for Petitioner.

ALLEN E. SUSMAN,
DONALD T. ROSENFELD,
523 West Sixth Street,
Los Angeles 14, California,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

PAGE

Citations to opinions below 1

Jurisdiction 2

Question presented 2

Statute involved 2

Statement of the case 2

Reasons for granting the writ 4

Conclusion 6

Appendices:

Appendix A. Statutory provisions involved ..... App. p. 1

Appendix B. Opinion of the United States Court of Appeals ..... App. p. 3

Appendix C. Findings of fact and conclusions of law ..... App. p. 10

Judgment for refund of taxes ..... App. p. 17

TABLE OF AUTHORITIES CITED

Cases

	PAGE
Crane v. United States, 331 U. S. 1, 67 S. Ct. 1047, 91 L. Ed. 1301	4
Edward H. Ellis & Sons v. United States, 187 F. 2d 648	5
Exhibit Supply Co. v. Ace Patents Corp., 315 U. S. 126, 86 L. Ed. 736, 62 S. Ct. 513	5
Getchell Mine Co. v. United States, 181 F. 2d 987	5
Kerns v. United States, 204 F. 2d 813	5
Muncie Gear Works v. Outboard M. & Mfg. Co., 315 U. S. 759, 86 L. Ed. 1171, 62 S. Ct. 865	5
Schriber-Schroth Co. v. Cleveland Trust Co., 305 U. S. 47, 83 L. Ed. 34, 59 S. Ct. 8	5

Statutes

Act of June 25, 1948, Chap. 646, 62 Stat. 928	2
Internal Revenue Code of 1939, Sec. 3469(a)	2, 3
Internal Revenue Code of 1954, Secs. 4261-4264	4
United States Code, Title 26, Sec. 3469(a)	2
United States Code, Title 28, Sec. 1254(1)	2

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Twentieth Century-Fox Film Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on June 29, 1956.

Citations to Opinions Below.

The findings of fact and conclusions of law and judgment of the District Court are unreported and are printed in Appendix C hereto, *infra*, p. 10. The opinion of the Circuit Court of Appeals, printed in Appendix B hereto, *infra*, p. 3, has not been reported as this petition goes to the printer.

Jurisdiction.

The judgment of the Circuit Court of Appeals was dated and entered on June 29, 1956. R. 45; Appendix B hereto, p. 3, *infra*. The jurisdiction of this Court is invoked under Chapter 646 of the Act of June 25, 1948, 62 Stat. 928; 28 U. S. C., Section 1254(1).

Question Presented.

Whether payments by a motion picture producer for the use of an airplane and services of a pilot for the purpose of aerial photography from air to air and from air to ground and for the purpose of selection from the air of suitable locations on the ground for the production of motion pictures are subject to the tax on transportation of persons imposed by Section 3469(a) of the Internal Revenue Code of 1939.

Statute Involved.

The statutory provision involved is Section 3469(a) of the Internal Revenue Code of 1939, 26 U. S. C. 3469(a). It is printed in Appendix A, *infra*, p. 1.

Statement of the Case.

The jurisdiction of the District Court was invoked because the case was a civil action against the United States for recovery of internal revenue tax alleged to have been erroneously and illegally assessed and collected. During the period commencing October 1, 1946, to August 1, 1949 petitioner employed Paul Mantz Air Services, hereinafter referred to as "Mantz," to render certain services to petitioner. Mantz furnished airplanes with pilots and petitioner used the airplanes for purposes of

photographing from the air various scenes in the course of production of motion pictures and for discovering or examining from the air locations on the ground suitable for the production of motion pictures. When the airplanes were used for purposes of photography from the air, the only person or persons in said airplanes, in addition to the pilot, were cameramen engaged in such photography. When the airplanes were used for purposes of discovery or examination of ground locations the only persons in the airplanes, in addition to the pilot, were employees of petitioner who were directly concerned with the suitability of such locations for the production of a particular motion picture, such as the producer, director, assistant director, production manager, art director and cameraman. The detailed facts concerning each flight involved appear in the opinion of the Circuit Court.

The charges by Mantz to petitioner were on an hourly or per mile basis without regard to whether any employee of petitioner was aboard the airplane. Transportation tax was paid on all of these charges, including charges for time when no employee of petitioner was in the airplane and when the airplane was not engaged in photography or observation.

The District Court found that none of the airplane flights involved the "transportation of persons" as that term is used in accordance with its ordinary meaning and common usage and as the term is used in Section 3469(a) of the Internal Revenue Code of 1939. The Circuit Court set aside the judgment of the District Court and remanded the case for entry of judgment in favor of respondent.

Reasons for Granting the Writ.

1. This case presents to this Court for the first time the proper meaning of the crucial term "transportation" in the statute imposing a tax on the transportation of persons. Because the statute involved was reenacted without material change in the Internal Revenue Code of 1954, Sections 4261-4264, the question presented is of current importance. This Court has held that "the words of a statute—including revenue acts—should be interpreted where possible in their ordinary, every day senses." *Crane v. United States,* 331 U. S. 1, 6, 67 S. Ct. 1047, 91 L. Ed. 1301, 1306 (1946). The Circuit Court, however, has in effect held that any movement of persons is transportation regardless of the reasons, purposes or nature of the movement. The result of this holding will, we believe, result in confusion and uncertainty in the application of the tax on transportation of persons.

2. The concentration of a substantial portion of the motion picture industry in and around Los Angeles, California indicates that the question presented will probably arise only in the District Court for the Southern District of California and that Circuit Courts other than the Ninth will not have an opportunity to pass upon this question. The tax problem involved, however, will constantly recur in the motion picture industry, as is shown by pendency of five additional suits in the District Court involving this same question.[1]

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[1] *Loew's, Inc. v. United States,* Civil No. 14244 PH; *Paramount Pictures Corp. v. United States,* Civil No. 14245 PH; *Samuel Goldwyn Productions, Inc. v. United States,* Civil No. 14246 PH; *Columbia Pictures Corp. v. United States,* Civil No. 14247 PH; *Warner Bros. Pictures, Inc. v. United States,* Civil No. 14248 PH.

This Court has deemed certiorari appropriate to determine an issue of importance to a particular industry, absent conflict between circuits, where as in the instant case the particular industry is so concentrated in a single circuit that it is unlikely a conflict between circuits will occur. (*Schriber-Schroth Co. v. Cleveland Trust Co.* (1938), 305 U. S. 47, 49, 83 L. Ed. 34, 36, 59 S. Ct. 8; *Muncie Gear Works v. Outboard M. & Mfg. Co.* (1942), 315 U. S. 759, 766, 86 L. Ed. 1171, 1177, 62 S. Ct. 865; *Exhibit Supply Co. v. Ace Patents Corp.* (1942), 315 U. S. 126, 128, 86 L. Ed. 736, 740, 62 S. Ct. 513.)

The Circuit Court's decision below, which was forecast in its earlier decision in *Getchell Mine Co. v. United States,* 181 F. 2d 987, does, moreover, conflict in principle with the decision of the Third Circuit in *Edward H. Ellis & Sons v. United States,* 187 F. 2d 648, 700 and of the Fourth Circuit in *Kerns v. United States,* 204 F. 2d 813, 815. The Third and Fourth Circuit Courts hold that when movement of property is an integral part of a taxpayer's business it is not "transportation" in its ordinary sense. The Ninth Circuit Court expressly rejected this test in its *Getchell Mine Co.* decision and in the subject case has now extended its minority viewpoint to the tax on transportation of persons. Decision by this Court is essential to a resolution of these conflicting rules.

Conclusion.

We believe it appropriate for the writ of certiorari to issue in order to enable this Court to establish a cornerstone in the construction of the term "transportation of persons" as used in the Internal Revenue Code, to decide an issue of great importance to the motion picture industry, to eliminate conflicting principles of taxation in the Circuits below and to eliminate the confusion which will otherwise arise in the application of the statute to other situations involving numerous taxpayers.

Respectfully submitted,

JOSEPH P. LOEB,

Attorney for Petitioner.

ALLEN E. SUSMAN,

DONALD T. ROSENFELD,

Of Counsel.